

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**National Association of State Utility
Consumer Advocates' Petition for)
Declaratory Ruling Regarding Truth -In)
-Billing)**

CG Docket No. 04-208

COMMENTS OF THE STATE OF TEXAS

Introduction

Pursuant to the Notice published by the Commission on June 15, 2004, establishing a comment cycle for the National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-In-Billing, the Office of the Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section ("State" or "State of Texas"), files these comments on behalf of Texas state agencies and universities. The role of this Section of the Attorney General's Office is to represent the interests of Texas state agencies and universities as consumers of traditionally regulated utility services, including telecommunications services.

Comments

On March 30, 2004, the National Association of State Utility Consumer Advocates ("NASUCA") filed a petition for a declaratory ruling prohibiting telecommunications carriers from "imposing monthly line-item charges, surcharges or other fees on customers' bills unless such charges have been expressly mandated by a regulatory agency." NASUCA Petition at 1.

The State of Texas concurs with NASUCA that:

“[t]he regime of surcharges adopted by both wireline and wireless carriers is not only misleading and deceptive, it is also ultimately anti-competitive and uneconomic. The line item surcharges and fees at issue frustrate consumers’ ability to make informed decisions about carriers based on rates.”

NASUCA Petition at 7-8.

Telecommunications carriers’ usage of line-item billing charges is also misleading and deceptive in its application and bears no demonstrable and accurate relationship to the regulatory costs they purport to recover. NASUCA Petition at 37, 42.

The State of Texas has received countless bills containing instances of regulatory fees and surcharges purporting to recover “regulatory “or “administrative” costs, but which upon further analysis are nothing other than regular operating expenses, such as those incurred by any other business. The NASUCA Petition addresses some of the more commonly seen “fees” at pages 10-22, so we will not burden the record by repeating that analysis here, and only note that we concur with NASUCA’s conclusions regarding them as referenced above.

The State of Texas has a particular interest in this issue, as it is regularly and constantly involved in resolving questions regarding the validity of various fees and surcharges found on telecommunications carrier bills in its capacity as a billing resource for state agencies. We are constantly confronted with a myriad of new surcharges, or new names for pre-existing surcharges, some of which appear to be government imposed, but are not actually so, and others of which are being billed in contravention of statutes, regulations or the state’s contractual relationships with its vendors of telecommunications services. The time and work involved in keeping up with of all of these surcharges and

their applicability grows appreciably each year. The issues are further complicated for Texas state agencies because of statutory, regulatory, and contractual exemptions for state agencies which apply or may apply to many of these surcharges. Each new “fee” must be analyzed to determine what costs it is actually recovering and whether there is in fact any legal authority for it. Then the various state agency exemptions must also be scrutinized to determine their potential applicability. Needless to say, this is time consuming work, and it constantly proliferates due to the carriers ingenuity in creating new “fees.”

As NASUCA most accurately states, “It would be administratively impossible to look at each carrier or each carrier’s fee, to determine whether the fee is sufficiently and accurately described, whether consumers are adequately informed of the fee, or whether the fee reasonably recovers the cost incurred by the carrier in complying with the regulatory program(s) to which the fee is attributed.” NASUCA Petition at 23-24.

The State of Texas therefore supports the NASUCA position that only expressly government-mandated surcharges should be allowed to appear on a bill as separate line items. This would allow carriers to continue the recovery of specific mandatory governmental assessments applicable to end user customers, such as 911 emergency service fees. The State certainly has no interest in denying carriers the opportunity to recover their legitimate costs, but all legitimate operating costs should be recovered through the base price of the service being offered. This is how any other business recovers its expenses. It would also allow consumers to make accurate comparisons of the costs of the various telecommunications services available, as making such comparisons today is increasingly difficult due to the proliferation of these “fees.”

The Texas Deceptive Trade Practices Act prohibits false, misleading and deceptive acts and practices in the conduct of trade and commerce.¹ Any “fee “ imposed which is not mandatory potentially creates a misleading impression in the consumer’s mind that the carrier had no choice but to impose it. Allowing only government-mandated surcharges would avoid potential claims of deception, give real meaning to the low monthly and per minute rates commonly advertised and offered by carriers, and allow consumers to make better economic choices.

Conclusion

The State of Texas appreciates the opportunity to file initial comments in this important proceeding. The Commission should prohibit all carriers under FCC jurisdiction from imposing any separate monthly fees, line items or surcharges unless:

- (a) such charge is mandated by federal, state or local law, or governmental authority;**
- and**
- (b) the amount of such charge conforms to the amount expressly authorized by federal, state, or local law or governmental authority.**

Dated: July 14, 2004

Respectfully submitted,

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¹ TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 1987 & Supp. 2004).

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Certificate of Service

I certify that a copy of these comments is being served on or before July 14, 2004 by regular or overnight mail, fax, or via e-mail on the Commission Secretary and other personnel required by the public notice.

Roger B. Borgelt

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